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TO: Commissioner for Patents  
 Attn: Jennifer Kim  
 Patent Examining Corps  
 Facsimile Center  
 Washington, D.C. 20231

FROM: Ann S. Viksnins

OUR REF: 875.039US1

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**FAX NUMBER (703) 308-7924**

\* Please deliver to Examiner Jennifer Kim in Art Unit 1617. \*

Document Transmitted: Petition to Remove Finality of Office Action (3 pgs)

Total pages of this transmission, including cover letter: 4 pgs

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In re. Patent Application of: Fred S. Lamb

Examiner: Jennifer Kim

Serial No.: 09/512,926

Group Art Unit: 1617

Filed: February 25, 2000

Docket No.: 875.039US1

Title: METHODS TO REDUCE THE SENSITIVITY OF  
 ENDOTHELIALLY-COMPROMISED VASCULAR SMOOTH MUSCLE

Please consider this a PETITION FOR EXTENSION OF TIME for sufficient number of months to enter these papers and please charge any additional required fees or credit overpayment to Dep sit Acct. No. 19-0743.

By: Ann S. Viksnins  
 Name: Ann S. Viksnins  
 Reg. No.: Reg. No. 37,748

I hereby certify that this paper is being transmitted by facsimile to the U.S. Patent and Trademark Office on the date shown below.

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December 10, 2002  
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**EXPEDITED PROCEDURE - EXAMINING GROUP 1617****S/N 09/512,926**

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

Applicant:	Fred S. Lamb	Examiner:	Jennifer Kim
Serial No.:	09/512,926	Group Art Unit:	1617
Filed:	February 25, 2000	Docket:	875.039US1
Title:	METHODS TO REDUCE THE SENSITIVITY OF ENDOTHELIALY-COMPROMISED VASCULAR SMOOTH MUSCLE		

**PETITION TO REMOVE FINALITY OF OFFICE ACTION**

**Box AF**  
Commissioner for Patents  
Washington, D.C. 20231

Applicant respectfully requests that the finality of the Office Action dated July 30, 2002 ("the Action") be removed. The Action was the second Office Action issued in the prosecution of the above-identified application. Applicant responded to this Action in a timely manner on October 29, 2002. An Advisory Action was mailed on November 20, 2002.

M.P.E.P. § 706.07(a) states that "[u]nder present practice, second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 CFR 1.97(c)."

The Examiner introduced a new ground of rejection of the claims in the Action. In particular, the Examiner rejected claims 4, 6-10, 13 and 24 under 35 U.S.C. § 102(e) as being anticipated by Grainger et al. (U.S. Patent No. 6,197,789) (page 2 of the Action). The Examiner asserted Applicant's amendment necessitated the new ground of rejection, and that the Action was thus final pursuant to M.P.E.P. § 706.07(a). Applicant asserts, however, that the amendments to the claims presented in the Amendment and Response filed January 9, 2002 ("the

**PETITION TO REMOVE FINALITY OF OFFICE ACTION**

Serial No. 09/512,926

Filing Date: February 25, 2000

Title: METHODS TO REDUCE THE SENSITIVITY OF ENDOTHELIALY-COMPROMISED VASCULAR SMOOTH MUSCLE

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The Examiner is invited to telephone Applicant's attorney (612 373-6961) to facilitate prosecution of this application. If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

FRED S. LAMB,

By his Representatives,

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH, P.A.  
P.O. Box 2938  
Minneapolis, MN 55402  
(612) 373-6961

Date 10 December 2002

By \_\_\_\_\_

*Ann S. Viksnins*

Ann S. Viksnins  
Reg. No. 37,748

The undersigned hereby certifies that this correspondence is being transmitted by facsimile (FAX NO. 703-308-7924) to: Box AF,  
Commissioner of Patents, Attn.: Examiner Jennifer Kim, GPO 1617, Washington, D.C. 20231, on this 10<sup>th</sup> day of December, 2002.

Candis B. Buending

Name

Signature

*Candis B. Buending*

**PETITION TO REMOVE FINALITY OF OFFICE ACTION.**

Serial No. 09/512,926

Filing Date: February 25, 2000

Title: **METHODS TO REDUCE THE SENSITIVITY OF ENDOTHELIALY-COMPROMISED VASCULAR SMOOTH MUSCLE**Page 2  
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Amendment") did not alter the scope of the pending claims. Amendments to the claims presented in the Amendment were made for the following reasons: (a) to remove a parenthetical term, as requested by the Examiner; (b) to correct typographical errors; and (c) to recite proper antecedent basis. Thus, it is submitted that the finality of the Action is not necessitated by Applicant's amendment of the claims.

Further, the new ground of rejection presented in the Action is not based upon information from an IDS filed under 37 C.F.R. § 1.97(c). Applicant submitted an IDS on June 18, 2001 (*i.e.*, before the first Office Action). Applicant submitted a Supplemental IDS on March 21, 2002, but none of the references cited in this Supplemental IDS were cited against the application by the Examiner in the Action. Thus, the finality of the Action is not proper pursuant to M.P.E.P. § 706.07(a).

In conclusion, Applicant asserts that the finality of the Action was not necessitated by Applicant's amendment of the claims, and was not based upon information submitted in an IDS filed during the period set forth in 37 C.F.R. § 1.97(c). Applicant therefore asserts that the finality is improper. Thus, Applicant respectfully requests that the finality of the Office Action be withdrawn.